SUPREME COURT, U. S.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1967

NO. 1055

ANTHONY HASWELL,

*Appellant,*

vs.

PAUL POWELL, Secretary of State, Illinois,

*Appellee.*

(On Appeal From The Supreme Court Of The State of Illinois.)

## MOTION TO DISMISS

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## MOTION TO DISMISS

Paul Powell, Secretary of State of the State of Illinois, appellee, by William G. Clark, Attorney General of the State of Illinois, moves to dismiss this appeal from the Supreme Court of Illinois on the ground that it does not present a substantial Federal question.

## ARGUMENT

The Illinois Supreme Court was correct in holding that the operation of a motor vehicle is subject to regulation by a state under its police power, and that a ninety-day suspension of a driver's license after conviction for three moving violations was a reasonable exercise of police power. Section 6-206 of the Illinois Motor Vehicle Law is clear and certain, and there is no evidence in this case to show that the licensee was denied a fair hearing or proper judicial review under the Illinois Administrative Review Act.

### I.

### A Citizen Does Not Have An Absolute Right To Drive An Automobile.

The decisions in *Aptheker* v. *Secretary of State*, 378 U.S. 500, and *Kent* v. *Dulles*, 357 U.S. 116, relied on by the licensee clearly have no application to this case. There can be no analogy from the concept of a right to travel abroad to a theory that gives every person the absolute right to drive an automobile notwithstanding his unsafe driving habits.

All citizens do not have drivers' licenses and this does not result in a restriction on their travel. There are other modes of transportation than an automobile. In addition, the suspension of a driver's license certainly does not bar one from being a passenger in a car.

Although an individual may be entitled to travel abroad, this does not mean that he also has the right to pilot the ship or plane taking him to his destination. Thus, travel

is not restricted by the suspension of a driver's license, but merely, the suspension is the denial of permission to operate a dangerous vehicle.

It is true that a driver's license is something of significant value, and Illinois law provides a safeguard to relieve undue hardship after the suspension of a license. A restricted driver's license may be issued during a period of suspension in order that a person may continue his employment or accomplish other necessary tasks. [Ill. Rev. Stat. 1967, ch. 95½, sec. 6-206 (c) (2) ]. Thus, even though a license is suspended, a person still may be permitted to travel by driving a car. The licensee is aware of this provision since he has previously applied for a restricted license during the period of a prior suspension of his license.

## II.

## The Suspension Of A Driver's License Is Not A Criminal Penalty.

The suspension of a driver's license under Chapter 95½, par. 6-206(a) (2), Ill. Rev. Stat. 1967, which requires the showing of not less than three offenses against traffic regulations is not penal or punishment for past unlawful conduct but for the purpose of making the streets and highways safe and protecting the public from an incompetent driver or one who lacks care for the safety of others. The suspension or revocation of a license is not punishment requiring a judicial determination, but an administrative exercise of police power to exclude an incompetent person from activity that would endanger the health, welfare and safety of the community. The following cases of other states all hold that the suspension or

revocation of a driver's license is not punishment for wrongdoing but action taken for public safety. *Goats* v. *State,* 364 S.W. 2d 889, 891 (S. Ct. Tenn. 1963); *Anderson* v. *Minnesota Highway Commissioner,* 126 N.W. 2d 778, 783, (S. Ct. Minn. 1964); *Commonwealth* v. *Harris,* 128 S.W. 2d 579, 580 (Ct. App. Ken. 1939); *Cooley* v. *Texas Dept. of Public Safety,* 348 S.W. 2d 267, 269, (Tex. Ct. App. 1961); *State* v. *Amick,* 114 N.W. 2d 893, 895 (S. Ct. Neb., 1962).

In *Beamon* v. *Dept. of Motor Vehicles,* 4 Cal. Rept. 396, (Ct. App. Cal. 1960), a license suspension was under the same type of constitutional attack and the court said at page 403:

> "The fact that petitioner may suffer inconvenience and even economic loss because he has been denied a license does not make the remedial action of the department the imposition of punishment for past offenses. In a determination of his qualification as a driver, the prior traffic record of a driver including . . . convictions of traffic violations, is relevant and material evidence of his knowledge of and compliance with the vehicle laws and his ability to exercise ordinary and reasonable care in operating a motor vehicle."

In *Levin* v. *Carpenter,* 332 S.W. 2d 865, cited by the licensee, no constitutional issues were present, and the case turned on the meaning of what constituted four convictions. Also the basis of the holding in *Brown* v. *Kelly,* 169 NYS 2d 209 (App. Div. 1957) was not that the suspension of a license is punishment, but rather that the suspension was based upon a conviction for speeding under a statute which was later held void for uncertainty.

In conclusion, when a driver violates a law or ordinance governing traffic, he is subject to fine and possibly imprisonment. Action under these provisions is penal. But

when the Secretary of State takes appropriate administrative action to revoke or suspend one's license, the action is civil and not penal. Its purpose is the protection of the public and clearly does not involve a double penalty for the same offense.

It is to be noted that the suspension of a license to drive is no more penal than the suspension of a license to operate a tavern or engage in other regulated trades or professions. Such license suspensions are all deemed civil and not criminal in nature and are within the scope and control of administrative agencies.

## III.

### The Statute Under Which The License Was Suspended Is Definite And Certain.

Chapter 95½, Par. 6-206 (a) (2), Ill. Rev. Stat. 1967, under which the appellant's license was suspended is completely clear. The main element of the statute is that there must be present convictions of not less than three offenses against traffic regulations within any twelve-month period. This is a definite standard far more certain than statutes of other states authorizing suspension of a driver's license.

In *Ross* v. *MacDuff*, 127 N.E. 2d 806, 807 (N.Y. Ct. of App. 1955) the court rejected the argument that a New York statute permitting the Commissioner of Motor Vehicles to suspend a driver's license for habitual or persistent violation of traffic laws was unconstitutional in that no *criteria* or standard defining the words "habitual" or "persistent" was established by the legislature. The court held that circumstances under which a licensee may be deemed guilty of habitual or persistent violation vary with the changes in highway condition, amount of traffic,

type of control, power and speed of vehicles, changes in local traffic regulations and ordinances, and myriad other elements which necessitate the delegation and formulation of specific rules to administrative officials. *MacDuff* was cited with approval by the Minnesota Supreme Court in *Anderson* v. *Comm. of Highways,* 126 N.W. 2d 778, 782, (S. Ct. Minn. 1964).

Statutes authorizing suspension for habitually reckless or negligent driving, *Sturgill* v. *Beard,* 303 S.W. 2d 908, 910 (Ct. App. Ky. 1957); *Johnson* v. *Sanchez,* 351 P. 2d 449, 453 (S. Ct. N.M. 1960); and serious violation of a motor vehicle law, *Damer* v. *Hass,* 134 N.W. 2d 534, 540 (S. Ct. Iowa, 1965) have all been declared definite and certain. In *Sanchez* the court held that the meaning of habitual negligent and reckless driving is well known to all and the suspending and revoking officials have thereby a definite and tangible standard to guide them in their determination.

The Illinois Legislature adopted with wisdom a statute that was clearer than most other states in that it established a specific number of convictions for violation of traffic regulations as a standard before allowing the suspension of a driver's license. The Act is further clarified by designating these violations to be such to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highway. The General Assembly is not required to go further and define words in common and daily use. *Joseph Triner Corp.* v. *MacNeil,* 363 Ill. 559, 581, aff'd. 299 U.S. 183.

The Secretary of State has administratively determined that eighty-four separate violations of traffic regulation show disrespect for traffic laws and a disregard for the safety of other persons upon the highway and conviction

of any three of these violations results in at least a thirty-day suspension. The licensee was convicted of three violations within this class, and therefore, his license was suspended.

Thus it is clear that the language of the statute satisfies the constitutional test of certainty.

## IV.

### Suspension Of A Driver's License Through An Administrative Proceeding Is Within The Constitutional Limitations Of Due Process.

The licensee argues (Brief, p. 12) that the suspension was a denial of due process in that the license was revoked through an administrative process rather than a judicial proceeding. He further asserts that he could only review the suspension by a "costly and time-consuming appeal under the Illinois Administrative Review Act." There can be no question that the legislature can delegate to the Secretary of State its power to regulate and license drivers. In addition, the very purpose of the Illinois Administrative Review Act is to safeguard the rights of individuals in their relationship with governmental agencies and not to deprive them of due process.

The business of the Illinois Secretary of State's office is not to revoke drivers' licenses as stated by the licensee but rather to safeguard the lives of the citizens of Illinois from the wanton and reckless conduct of irresponsible drivers.

Appellant's unique but meritless argument should be dismissed as having no basis in law.

## V.

### The Licensee Received A Fair Hearing And The Record Shows No Misconduct By The Hearing Officer Or Representative For The Secretary of State.

The plaintiff's argument that since both the hearing officer and the attorney for the Secretary of State were employees of the Secretary of State, it was not a fair trial, and the suspension was without due process of law, is without merit. This contention again presupposes that the suspension of a license must be the result of a judicial trial. This argument has already been answered.

No facts have been alleged in this case to show that the hearing officer acted improperly. The evidence gathered at the hearing was uncontested. In addition, due process is not violated because a hearing officer is employed by the agency conducting the hearing. A hearing officer is presumed to act in a fair and impartial manner and not in behalf of someone who issues his paycheck. The conduct of the hearing in this case was subjected to review by the highest court of Illinois. In *Marcello* v. *Bonds,* 349 U.S. 311, 75 S. Ct. 757, 762 (1955), it was held that even though a hearing officer is under supervision of the agency charged with the investigating function, there is no violation of due process.

Thus, there can be no complaint that the hearing resulted in the denial of due process.

## CONCLUSION

It is respectfully submitted, therefore, that appellant presents no substantial Federal question for the decision of this Court and that this appeal should be dismissed.

Respectfully submitted,

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